

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	Facility ID No. 46393
Alan Towle)	NAL/Acct. No. MB200641410091
)	FRN: 0012160982
For Renewal of License for FM Translator Station)	File No. BRFT-20041117ADE
K232BE Wausau, Wisconsin)	

FORFEITURE ORDER

Adopted: August 18, 2009

Released: August 19, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250) to Alan Towle ("Towle"), former licensee¹ of FM translator Station K232BE, Wausau, Wisconsin (the "Station"), for his willful violation of Section 73.3539 of the Commission's Rules ("Rules")² by failing to timely file a license renewal application for the Station.

II. BACKGROUND

2. On November 27, 2006, the Bureau issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of one thousand five hundred dollars (\$1,500) to Towle for this violation.³ Towle filed a Request for Cancellation of Proposed Forfeiture on December 29, 2006 ("Response").

3. As noted in the NAL, Towle's renewal application for the current Station's license term was due on August 1, 2004, four months prior to the December 1, 2004, expiration date.⁴ Towle did not file the application until November 17, 2004, and provided no explanation for the untimely filing of the renewal application. On November 27, 2006, the staff advised Towle of his apparent liability for a

¹ Towle assigned the Station to Western Wisconsin's Inspirational Broadcasters, Inc. in 2006 (See File No. BALFT-20060822AIY (granted November 28, 2006). The assignment was consummated on December 13, 2006. Despite this assignment, Towle remains liable for forfeiture for those violations occurring when the Station was under his stewardship. See, e.g., *Vista Point Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 140, 140 n.2 (MMB 1999) (finding Licensee liable for forfeiture for violations of the Commission's rules that took place when station was under its stewardship).

² 47 C.F.R. §73.3539.

³ See *Alan Towle*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13708 (2006).

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(a).

forfeiture of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the fact that Towle failed to timely file a renewal application for the Station.⁵ In response, Towle filed the Response.

4. In support of his Response, Towle explains that he was not aware that the renewal application was required to be filed four months prior to the expiration date of the Station's license, rather than merely *before* the expiration date. Towle states that this reason, together with his financial hardship and the Station's history of rebroadcasting its primary station to the area, warrants cancellation of the assessed forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission's Forfeiture Policy Statement.⁸ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁹

6. Towle does not dispute that he failed to file a timely renewal application for the Station, but states that the violation was an "oversight." Specifically, Towle asserts that he was unaware that the renewal application was required to be filed four months prior to the expiration of Station's license. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁰ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹¹

⁵ The Commission granted the above-referenced license renewal application on November 27, 2006.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹¹ See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on Licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

7. Regarding Towle's claim of financial hardship, also as specified in the NAL, the Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the licensee's current financial status.¹² Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹³ Towle has not provided any such documentation and we therefore will not reduce the forfeiture based on financial hardship.

8. We have considered Towle's response to the NAL in light of the above statutory factors, our Rules, and the Forfeiture Policy Statement. We conclude that Towle willfully¹⁴ violated Section 73.3539 of the Rules. However, given the Commission's recent decisions assessing forfeitures in the amount of \$250 to licensees of translator stations for violation of Section 73.3539 of the Rules, we reduce the forfeiture amount *sua sponte* to \$250.¹⁵

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁶ that Alan Towle, SHALL FORFEIT to the United States the sum of \$250 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules at the Station.

10. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed

¹² See, e.g., *Radio Free Georgia Broadcasting Foundation*, Forfeiture Order, 24 FCC Rcd 3336, 3337 (MB 2009).

¹³ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (Apr. 16, 2004).

¹⁴ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88 (1991).

¹⁵ See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (finding translator apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same).

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).¹⁷

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Alan Towle, 2606 Payne Street, Wausau, Wisconsin 54401.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.